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No. 693

In the Supreme Court of the United States

OCTOBER TERM, 1960

A. R. ROBERSON, CLAIMANT TO ONE 1958 FORD SEDAN, No. H8AG114917, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The judgment of the court of appeals (R. 176; Pet. App. 1) is reported at 282 F. 2d 772.

JURISDICTION

The judgment of the court of appeals was entered on October 13, 1960 (R. 176; Pet. App. 1). A petition for rehearing was denied on November 7, 1960 (R. 188; Pet. App. 2). The petition for a writ

of certiorari was filed on February 2, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the factual finding of the district court, in a libel proceeding, that a specific black 1958 Ford Sedan was used in the unlawful transportation of whiskey was sustained by the evidence.

STATEMENT

Petitioner seeks review of a judgment of the Court of Appeals for the Sixth Circuit (R. 176; Pet. 1), affirming the forfeiture by the District Court for the Eastern District of Tennessee of a black 1958 Ford sedan, No. H8AG114917, which the district court found had been used in the transportation of illegal whiskey (R. 167-168).

The trial also involved a 1957 Cadillac salon De Ville sedan (R. 33) and a yellow 1958 Ford Fairlane Victoria 500 model (R. 33, 38, 58), as to which the district court found the evidence insufficient. With respect to the black Ford sedan involved in the present petition the evidence may be summarized as follows:

Premises at 1022 Pine Street in Chattanooga were used in the illegal liquor business (R. 68, 75-79, 114-115). On November 15, 1958, petitioner was observed in a sedan from which some men unloaded a large number of five-gallon cans (R. 79-80, 88, 104-106, 110-111). The agents described the car as a

black, 1958 four-door Ford, with a spotlight on the left front, a radio antenna on the right front, and bearing a Georgia license No. 8-63 (R. 92, 104). One of the agents testified: "This was a series 300. It wasn't a Fairlane 500. I have seen very few of this series 300 four-doors, black" (R. 93). Agents again saw petitioner driving the car later on November 15 (R. 80-81, 106), and again on November 20 (R. 81).

Agent McKnight had seen petitioner, on September 26, driving the same car (R. 106, 108, 111; cf. R. 107). On this earlier occasion he observed that the metal around the inside rear light of the car was rusted (R. 107). This was true of the car seized on December 1—the car involved in this proceeding (R. 108).

The district judge found, as to the black 1958 Ford sedan, that "two or more of the witnesses in this record saw this black sedan automobile stop at or near 1022 Pine St., from which was taken 26 five-gallon square metal cans. [Petitioner] was in the car at that time" (R. 167). The court therefore forfeited the car. The court of appeals, in affirming the forfeiture, found that the findings of the district judge "are amply supported by the evidence" (R. 176; Pet. 1).

ARGUMENT

The sufficiency of the evidence to support the findings upheld by the two courts below—the only question raised in the petition for certiorari—presents no issue warranting review by this Court.

The claim that there was confusion as to the various automobiles is plainly unfounded. Both courts were capable of distinguishing a Cadillac from a Ford, and a yellow Ford from a black Ford. The trial judge repeatedly satisfied himself as to which incident and which car was involved in particular testimony (*e.g.*, R. 44-45, 55-56, 72-73). The testimony of each witness was generally preceded by a designation of the car being discussed (R. 47, 54, 64, 72-74, 93, 100, 103, 121; *e.g.*, "the next witness will testify as to the 1958 black Ford * * * the sedan," R. 103). The judge's findings are meticulously separated, designating each car at the outset of each group of findings (R. 160, 165, 167), and also discriminating in finding the facts as to the separate cars by denying a forfeiture as to the other two cars (R. 162, 166).

In an effort to show that there was no substantial evidence supporting the forfeiture, petitioner quotes the testimony of government agent McKnight that his identification of the car could not be absolute but could only rest on a description of the physical attributes that he observed. Petitioner overlooks the evidence of government agent Hynds, who specifically testified to the unloading of the car, noting the license number, a spotlight on the left and a radio antenna on the right, and the rarity of the series 300 four-door black type (R. 78-81, 88-89, 91-93, 100-102). There was, in addition, the fact that agent McKnight had seen Roberson in the Ford sedan on September 26, and noted rust around the rear light, a characteristic which was likewise present on the seized car.

In totality, the evidence adequately justified the conclusion that the car in question had been used to violate the internal revenue laws relating to liquor.[1]

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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FEBRUARY 1961.

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[1] Petitioner quotes from the testimony of witness Bosh Andrews, one of the helpers who unloaded the car (Pet. 7), presumably to show Andrews' lack of knowledge as to which of petitioner's cars was used on the occasion. But his testimony was not offered for that purpose but only for his knowledge that whiskey was unloaded when petitioner had driven the car and that petitioner had warned Andrews, "don't tell other folks" (R. 114-115). Andrews' lack of capacity to testify as to anything more precise was indicated in his response to petitioner's cross-examination, "How would I know the motor number on the car? * * * I can't even remember my own name sometimes—what it's supposed to be" (R. 117). Even so, on questioning by the judge, he confirmed the testimony of the two government agents that the car driven by petitioner was a black 1958 Ford (R. 117).

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